

Award No. 14253
Docket No. TE-11478

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

THE NEW YORK CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad (Western District), that:

1. The Carrier violated the parties' Agreement when it failed and refused to pay W. P. Vale, Agent-Telegrapher, Piney Fork, Ohio, the time and one half rate for work performed during his assigned vacation period October 6 through October 24, 1958.

2. The Carrier further violated the parties' Agreement when it unilaterally assigned and forced Claimant Vale to take his vacation November 3-21 inclusive, 1958, without conference or consultation with the local committee, and without proper notice to the claimant.

3. The Carrier shall, because of the violation set forth in Item 1 above, compensate Claimant Vale at the time and one half rate, instead of the pro rata paid, for work performed during his assigned vacation period October 6 through October 24, 1958, and in addition,

4. The Carrier shall, because of the violation set forth in Item 2, above, pay Claimant Vale a day's pay at the rate of the position occupied for each day he was not permitted to work, namely: November 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20 and 21, 1958, in accordance with the provisions of Articles 9 and 12 of the parties' Agreement.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute effective January 1, 1955, as amended.

The facts of the case are: W. P. Vale is the regularly assigned Agent-Telegrapher at Piney Fork, Ohio. He had, in the calendar year 1957, rendered

cedure of this Honorable Board, but failed of settlement. The dispute is, therefore, and herewith, appealed to your Honorable Board for adjudication.

CARRIER'S STATEMENT OF FACTS: There is in effect between the parties hereto an agreement concerning rules and working conditions applicable to Telegraphers' Agreement employees on Seniority Districts Nos. 1 to 10 inclusive, dated November 1, 1950, reprinted January 1, 1955, which is on file with your Board. Seniority District No. 4, as described on page 38 of this Agreement and on pages 66, 67 and 68 of the Agreement Wage Scale, includes Telegraphers' Agreement employees at locations east of Vickers on the Toledo Division and the Alliance and L.E. & P. Branches of the Lake Division (formerly Cleveland Division). Piney Fork is a station on the Alliance Branch of the Lake Division, and is located 58.08 miles south of Alliance, Ohio.

Claimant Vale was regularly assigned as Agent-Operator at Piney Fork, Ohio. On the vacation schedule for 1958 Claimant Vale was assigned a vacation of 15 working days starting October 6, 1958 and ending October 24, 1958.

On September 24, 1958 Mr. Vale was notified by message from the Chief Train Dispatcher — "Unable to relieve you for your vacation as scheduled. Will advise vacation date later."

In response to this message Mr. Vale wired the Chief Train Dispatcher on September 24, 1958 — "Re phone conversation this P. M. with Dr. Dorsey, postponing my vacation schedule from October 6th to October 27th. After thinking this matter over I find that I would prefer to work my vacation instead of taking one so late in the season."

The October 27th date was interjected by Vale and there was not a definite understanding of when his vacation would or could be arranged.

On October 24, 1958 Mr. Vale was notified that he would be relieved for his vacation starting November 3, 1958, for 15 working days. At that time there was no protest from Vale regarding the matter.

Mr. Vale submitted a claim for 15 days at time and one half, account required to work his scheduled vacation, for the dates of October 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23 and 24, 1958; and, after Mr. Vale took his vacation from November 3 to November 21, 1958, he submitted a claim for 15 days' pay at pro rata rate for each day of vacation account held out of service on illegal assigned vacation.

These claims for additional compensation were then handled in the usual manner up to and including the highest appeal officer of the Carrier, who, after discussion with the General Chairman, declined the claim.

On August 12, 1959, the Carrier received copy of formal notice from the Organization to the Third Division advising that the Organization would file an ex parte submission of this dispute.

OPINION OF BOARD: The applicable agreement provides, with respect to vacations, that:

"... while it is intended that the vacation date designated will be adhered to so far as practicable, the management shall have the right

to defer same provided . . . not less than ten (10) days' notice shall be given . . . If it becomes necessary to advance the designated date, at least thirty (30) days' notice will be given affected employee." (Emphasis ours.)

Carrier's actions in deferring Claimant's original choice of October 6, 1958 as the start of his vacation was timely given and permissible under the agreement.

At issue here is October 27, 1958 which Organization alleges was his new starting date. The evidence is Claimant's message of September 24 to Carrier, reading:

"Re phone conversation this P. M. with Mr. Dorsey, postponing my vacation schedule from October 6th to October 27th. After thinking this matter over I find that I would prefer to work my vacation instead of taking one so late in the season."

Carrier denies it assigned October 27 as a new starting date. It alleges it was the Claimant who "interjected" the October 27 date in his telegram.

For us to accept the Organization's view on this point requires more tangible evidence. Even if there was acceptable evidence of such designation, Claimant's telegram to the Carrier rejects the date, finding he preferred:

"to work my vacation instead of taking one so late in the season."

As the record shows, Claimant took his vacation starting November 3, 1958 for 15 working days, in accordance with Carrier's notice of October 24, 1958.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of March 1966.

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